Committee on Utilities & Telecommunications

Thursday, March 9, 2006
2:00 p.m. – 3:00 p.m.
404 HOB

Allan G. Bense
Speaker

Ken Littlefield
Chair

Florida House of Representatives

Commerce Council
Utilities & Telecommunications Committee

Kenneth W. "Ken" Littlefield
Committee Chairman

Bob "Coach" Henriquez
Committee Vice-Chairman

Agenda

Utilities and Telecommunications Committee
March 9, 2006 2:00 p.m. – 3:00 p.m. 404 HOB

I. Welcome and Opening Remarks by the Chairman

II. Roll Call

III. HM 883 – Federal Excise Tax on Telecommunications - Stargel

IV. Workshop – Draft Proposal by DEP from the Governor's Statewide Energy Plan

V. Closing Remarks by the Chairman

VI. Adjourn

HM 883 - Stargel

House Memorial

A memorial to the Congress of the United States urging repeal of the federal excise tax on telecommunications.

WHEREAS, the federal excise tax on communications was enacted in 1898 for the purpose of funding the Spanish-American War, and

WHEREAS, the tax was introduced as a temporary luxury tax, and

WHEREAS, telephone service is no longer a luxury, but rather is a necessity for consumers of all income levels, and

WHEREAS, the federal excise tax is regressive, as low-income Americans pay a higher percentage of their income for telephone services than high-income Americans, and

WHEREAS, telecommunications services are the infrastructure upon which new technologies including the Internet depend, and, therefore, the telecommunications excise tax discourages expansion of both the telephone infrastructure and new technologies, and

WHEREAS, the federal excise tax on telecommunications flows into the general fund rather than being earmarked for a specific purpose, and

WHEREAS, Congress passed a repeal of the federal excise tax on telecommunications in 2000, which was vetoed by President William Jefferson Clinton, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

That the Congress of the United States is requested to support a repeal of the federal excise tax on telecommunications.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 883 Federal Excise Tax on Telecommunications
SPONSOR(S): Stargel
TIED BILLS: **IDEN./SIM. BILLS:** SM 1240

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Holt
2) Rules & Calendar Council			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This memorial requests that the United States Congress support a repeal of the three percent federal excise tax on telecommunications. This tax was originally enacted to fund the Spanish-American War, and was repealed and reenacted multiple times to finance wars and other fiscal crises. While the tax has existed continuously since 1941, it was made permanent in 1990. However, the substance of the tax law has not changed since 1965, causing some items within the scope of telecommunications service to either be nontaxable, or to be unevenly taxed.

This memorial and the repeal of the excise tax appears to have no fiscal impact on the State of Florida.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes-This memorial requests that Congress repeal the federal excise tax on telecommunications.

B. EFFECT OF PROPOSED CHANGES:

Background

The federal government imposes a three percent excise tax on communications services defined as "local telephone service", "toll telephone service" and "teletypewriter exchange service." The end-use customer is responsible for paying the tax, with the service provider acting as a collection agent for the Internal Revenue Service (IRS). The history of this tax is as follows:[1]

1898	Enacted to finance the Spanish American War-Applied to long-distance service
1902	Tax Repealed
World War I	Tax Re-enacted-Applied to long-distance service
1924	Tax Repealed
1932	Tax Re-enacted
1941	Tax extended to local service
1965	Scheduled phase out and repeal
1966	Scheduled reductions were repealed
1968	Phase-out effective in 1970 enacted (later postponed)
1973	Phase-out to be complete in 1982 goes into effect
1980	Phase-out delayed by 1-year
1981	Repeal further delayed; Rate increased from 1 percent to 3 percent
1990	Revenue Reconciliation Act makes a 3 percent rate permanent
2000	President Clinton vetoes legislation repealing the tax[2]

Over the years, the tax rate has varied. From 1944 until 1954, the rate reached its peak of 10 percent on local service and 25 percent on some toll calls. When the 1965 phase-out began, the rate was 10 percent. In the early 1980s, the rate got as low as one percent, and has been at three percent since 1983.[3]

In 1987, the Treasury Department recommended that the tax expire; however, because of budget deficits, the tax was made permanent in 1990.[4] In general, excise taxes can impact consumer decisions, and the taxes on new services or technologies can make them more expensive and slow innovation.[5]

The last time that any significant revisions were made to the tax law was in 1965, and due to changing technologies, the rules now "fail to capture many services that were seen as within the scope of the

[1] United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures;* Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p.368-378.
[2] Americans for Tax Reform, "Sen. Rick Santorum (R-PA) Introduces Bill to Repeal Spanish-American War Tax" June 29, 2005.
[3] United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures;* Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p.371.
[4] *Id.,* at p.376.; The Tax Foundation; *Taxing Talk: The Telephone Excise Tax and Universal Service Fees.* March 1, 2000.
[5] United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures;* Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p. 376.

communications tax or they capture those services unevenly."[6] If fact, three federal appeals courts have determined that since the definition of "toll telephone service" is service where the charge varies "with the distance and elapsed transmission time," a service that charges just based on transmission time, but not distance, is not a "toll telephone service" for purposes of the excise tax.[7] However, the IRS has instructed telephone companies to continue collecting the tax.[8]

While the excise tax was originally enacted to pay for wars and other revenue crises, the revenue received from the tax is currently going into the federal government's general fund.[9] It is estimated that the federal government collected about $5.8 billion in 2003 from this tax.[10]

There are currently bills in the United States House of Representatives[11] and United States Senate[12] to repeal this tax.

Proposed Memorial

This memorial requests that the Congress of the United States support a repeal of the federal excise tax on telecommunications.

This memorial also provides that copies be sent to the following persons:

- President of the United States
- President of the United States Senate
- Speaker of the United States House of Representatives
- Each member of the Florida delegation to the United States Congress

C. SECTION DIRECTORY:

The memorial format does not contain sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. According to the Department of Revenue, for purposes of the Communications Services Tax (CST), federal taxes are excluded from the taxable sales price.

2. Expenditures:

   None. State governments are exempt from paying this tax.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[6] *Id.*

[7] Office Max Inc. v. United States, 428 F.3d 583 (6th Cir. 2005). See also, American Bankers Insurance Group v. United States, 408 F.3d 1328 (11th Cir. 2005), and National Railroad Passenger Corporation v. United States, 431 F.3d 374 (D.C. Cir. 2005).

[8] "Courts Erode Case for Excise Tax"; *The Washington Times*; February 20, 2006.

[9] Speech of the Honorable Gary G. Miller of California in the House of Representatives, Wednesday, April, 27, 2005.

[10] United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures;* Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p. 376.

[11] HR 1898, Sponsored by Representative Gary Miller of California, Introduced April 27, 2005.

[12] S. 1321, Sponsored by Senator Rick Santorum of Pennsylvania, Introduced June 28, 2005.

None. According to the Department of Revenue, for purposes of the CST, federal taxes are excluded from the taxable sales price.

2. Expenditures:

None. Local governments are exempt from paying this tax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The memorial requests that the federal government repeal its excise tax on telecommunications. If the tax is repealed, the private sector would have lower telephone bills.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This memorial does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Governor's Statewide
Energy Plan Draft Proposal

Florida Energy Act Summary

Part I. – Renewable Energy Technologies and Energy Efficiency Act

Sections 1 – 7

1. Creates intent language; definitions.
    - Definitions include act, department, Energy Star qualified appliance, person, renewable energy, renewable energy technology, solar energy system, solar photovoltaic system, solar thermal system.
2. Creates Renewable Energy Technologies Grant Program.
    - Matching grants for renewable energy technology demonstration, commercialization, research, and development.
    - Establishes eligible entities.
    - Establishes criteria for awarding grants.
    - Grants DEP rulemaking authority to administer the program.
3. Creates Energy Efficient Appliances Rebate Program
    - Establishes rebates for Florida citizens on a portion of the purchase price of Energy Star appliances bought in Florida.
    - Program effective dates from July 1, 2006 through June 30, 2010.
    - Gives DEP rulemaking authority.
    - Includes the ability to add extra incentives for low income families.
    - Creates a rollover ability to make payouts if funds in a given fiscal year are exhausted.
    - Requires DEP to report amount of funds available.
4. Creates Solar Energy Systems Rebate Program
    - Establishes rebates for Florida citizens on a portion of the purchase price of Solar Energy Systems installed in Florida.
    - Program effective dates from July 1, 2006 through June 30, 2010.
    - Gives DEP rulemaking authority.
    - Limits rebates to two per person.
    - Creates a rollover ability to make payouts if funds in a given fiscal year are exhausted.
    - Requires DEP to report amount of funds available.

Part II – Energy Council

Section 8

1. Creates Florida Energy Council to advise the state on current and projected energy issues.
2. Provides for appointment mechanisms for 8 members by the Governor, the Speaker of the House, and the President of the Senate.
3. Provides for travel reimbursement.
4. Provides for staffing by DEP, and for recording of meetings.

Part III – Tax Incentives

Sections 9 – 13

1. Creates a renewable energy technologies sales tax exemption.
    - Establishes a sales tax exemption for hydrogen vehicles and stations, fuel cells, and biodiesel and ethanol distribution.
    - Definitions include biodiesel, ethanol, and hydrogen fuel cells.
    - Creates a cap of 2 million per year for hydrogen vehicles and station.
    - Creates a cap of 1 million per year for fuel cells.
    - Creates a cap of 1 million per year for biodiesel and ethanol distribution.
    - Creates the mechanism for applying for the exemption as a rebate.
    - Requires DEP to administer the process.
    - Requires DEP to report amount of exemption funds available.
    - Repeals the program on July 1, 2010.
2. Creates a renewable energy technologies tax credit.
    - Establishes a corporate income tax credit program for hydrogen vehicles and stations, fuel cells, and alternative fuel production and distribution.
    - Definitions include biodiesel, eligible costs, ethanol, hydrogen fuel cells.
    - Credits for 75% of costs for investment in hydrogen powered vehicles and hydrogen vehicle fueling stations up to a cap of 3 million per year.
    - Credits for 75% of costs for an investment in commercial stationary hydrogen fuel cells up to a cap of $1.5 million per year.
    - Credits for 75% of costs for an investment in the production and distribution of biodiesel and ethanol up to a cap of $6.5 million per year
    - Investments may be made between July 1, 2006, and June 30, 2010
    - Credits may be taken in the 2007 through 2013 tax years.
    - Provides for an application process with DEP and DOR.
    - Grants DEP and DOR rulemaking authority.
    - Provides for administration by DOR and DEP, including audit, forfeiture, and revocation provisions.
    - Requires DEP to report amount of tax credits available.
    - Includes credits in definition of adjusted federal income.
    - Repeals the program on July 1, 2010.

Part IV – Public Service Commission
Sections 14 – 17; 40

1. Requires utilities to include fuel diversity in 10 year site plans.
2. Requires PSC to adopt at a minimum ANSI C2 standards for safety standards for transmission and distribution facilities.
3. Gives PSC the authority to adopt construction standards that exceed the National Electrical Safety Code, for purposes of assuring the reliable provision of service.
4. Amends PSC's authority to mandate fuel diversity if there is system inadequacy.
5. Adds distribution facilities to types of facilities PSC can examine for system inadequacies.
6. Amends PSC's authority to include fuel diversity during need processes.
7. Requires the PSC to do a report on system reliability and undergrounding in light of hurricanes.

8. Amends PSC notice requirements for need proceedings.

Part V – Power Plant Siting Act
Sections 18 – 39

1. Clarifies definitions of application, completeness, electric power plant, right of way. Adds definition for licensee, ultimate site capacity. Deletes definition for sufficiency.
2. Clarifies DEP duties and includes issuance of final orders and emergency orders, and acting as clerk for the siting board.
3. Streamlines interaction with federal permit to avoid conflicts.
4. Streamlines and shortens time frames by:
   - Combining completeness and sufficiency.
   - Eliminating mandatory land use and certification hearings.
   - Changing application distribution date.
   - Changing other deadlines.
5. Ensures public participation by clarifying notice provisions, providing for informational public meetings.
6. Clarifies requirements for agencies to file reports. Adds DOT to list of agencies who are parties to the proceeding, and who are required to file a report.
7. Clarifies and enhances the ability of the siting board to override local land use determinations.
8. Specifies the criteria the siting board uses to review the application.
9. Clarifies the requirements for the filing of post certification amendments.
10. Clarifies public notice requirements.
11. Amends fee section to take into account changes in the hearing processes.

Be It Enacted by the Legislature of the State of Florida:

A bill to be entitled The "Florida Energy Act"

Section 1. Section 377.801, Florida Statutes, is created to read:

377.801 Popular name.--Sections 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 2. Legislative findings and intent.--The Legislature finds that advancing the development of renewable energy technologies and energy efficiency is important for the state's future, energy stability, and protection of its citizens' public health and its environment. The Legislature finds that the development of renewable energy technologies and energy efficiency in the state will help to reduce demand for foreign fuels, promote energy diversity, enhance system reliability, reduce pollution, educate the public on the promise of renewable energy technologies, and promote economic growth. The Legislature finds that there is a need to assist in the development of market demand that will advance the commercialization and widespread application of renewable energy technologies. The Legislature further finds that the state is ideally positioned to stimulate economic development through such renewable energy technologies due to its ongoing and successful research and development track record in these areas, an abundance of natural and renewable energy sources, an ability to attract significant research and development federal dollars, and the need to find and secure renewable energy technologies for the benefit of its citizens, visitors, and environment.

Section 3. Section 377.802, Florida Statutes, is created to read:

377.802 Purpose.--This act is intended to provide matching grants to stimulate capital investment in the state and to

enhance the market for and promote the statewide utilization of renewable energy technologies. The targeted grants program is designed to advance the already growing establishment of renewable energy technologies in the state and encourage the use of other incentives such as tax exemptions and regulatory certainty to attract additional renewable energy technology producers, developers, and users to the state. This act is also intended to provide rebates for energy efficient appliances, and for solar energy equipment installations for residential and commercial buildings.

Section 4. Section 377.803, Florida Statutes, is created to read:

377.803 Definitions.--As used in this act, the term:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.

(2) "Department" means the Department of Environmental Protection.

(3) "Energy Star qualified appliance" means a refrigerator, residential model clothes washer including a residential style coin operated clothes washer, or dishwasher the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding such agency's energy saving efficiency requirements under each agency's Energy Star program.

(4) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

(5) "Renewable energy" means renewable energy as defined in s. 366.91.

(6) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

(7) "Solar energy system" means equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition. The term solar energy systems does not include swimming pool heaters.

(8) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.

(9) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following based on the criteria in this section:

(a) Municipalities and county governments;

(b) Established for-profit companies licensed to do business in the state;

(c) Universities in the state;

(d) Utilities located and operating within the state;

(e) Nonprofit organizations; and

(f) Other qualified persons, as determined by the department.

(3) The department may adopt rules to administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies;

(b) The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory which supports the proposal.

(c) The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology;

(d) The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential;

(e) The degree to which a project demonstrates efficient use of energy and material resources;

(f) The degree to which the project fosters overall understanding and appreciation of renewable energy technologies;

(g) The availability of matching funds from an applicant;

(h) Other in-kind contributions applied to the total project;

(i) The ability to administer a complete project;

(j) Project duration and timeline for expenditures;

(k) The geographic area in which the project is to be conducted in relation to other projects;

(1) The degree of public visibility and interaction.

Section 6. Section 377.805, Florida Statutes, is created to read:

377.805 Energy Efficient Appliances Rebate Program.—

(1) The Energy Efficient Appliances Rebate Program is established within the department to provide for financial incentives for the purchase of Energy Star qualified appliances as specified below.

(2) Any person who is a resident of Florida who has purchased a new Energy Star qualified appliance, from July 1, 2006 through June 30, 2010 from a retail store in the state is eligible for a rebate of a portion of the purchase price of that Energy Star qualified appliance.

(3) The department shall adopt rules to designate rebate amounts and administer the issuance of rebates. The department's rules may include separate incentives for low income families to purchase Energy Star qualified appliances.

(4) Rebates must be applied for within 90 days of the purchase of the Energy Star qualified appliance.

(5) A person is limited to no more than one rebate per type of appliance per year.

(6) The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year.

(7) The department shall determine and publish to the public on a regular basis the amount of rebate funds still available in each fiscal year.

Section 7. Section 377.806, Florida Statutes, is created to read:

377.806 Solar Energy Systems Rebate Program.-

(1) The Solar Energy Systems Rebate Program is established within the department to provide for financial incentives for the purchase of solar energy systems.

(2) Any person who has purchased a new solar energy system of 2 kilowatts or larger for solar photovoltaic systems, or which provides at least fifty percent of the buildings hot water consumption for solar thermal systems from July 1, 2006 through June 30, 2010, installed in the state by a certified solar contractor in the state is eligible for a rebate of a portion of the purchase price of that solar energy equipment.

(3) The department shall adopt rules to designate rebate amounts and administer the issuance of rebates.

(4) Rebates must be applied for within 90 days of the purchase of the solar energy equipment.

(5) Rebates shall be limited to no more than two per person.

(6) The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year.

(7) The department shall determine and publish to the public on a regular basis the amount of rebate funds still available in each fiscal year.

Section 8. Section 377.900 is created to read:

377.900 Florida Energy Council.--

(1) The Florida Energy Council is created within the Department of Environmental Protection.

(2) PURPOSE - The council is created to provide advice and counsel to the Governor, Speaker of the House and Senate

President on energy policy in the state. The council should advise the state on current and projected energy issues including, but not limited to generation, transmission, and fuel supply issues.

(3) COMPOSITION - The council shall be comprised of a diverse group of stakeholders, including utility providers, researchers, fuel suppliers, technology manufacturers, environmental interests and others.

(4) MEMBERSHIP - The council shall consist of 8 members, all of whom shall be voting members. All members shall be appointed by September 1, 2006, in the following manner:

(a) One member shall be the Secretary of the Department of Environmental Protection, who shall serve as chair of the council.

(b) One member shall be the Chair of the Public Service Commission, who shall serve as vice chair of the council.

(c) Two members shall be appointed by the Governor.

(d) Two members shall be appointed by the President of the Senate.

(e) Two members shall be appointed by the Speaker of the House of Representatives.

(f) Appointments made by the Governor, the President of the Senate, and the Speaker of the House of Representatives shall be to terms of 2 years each. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(5) Members shall serve without compensation, but are entitled to reimbursement of travel and per diem expenses pursuant to s. 112.061, relating to completing their duties and responsibilities.

(6) The Department of Environmental Protection shall provide

primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(7) The Department of Environmental Protection may adopt rules pursuant to ss. 120.536 and 120.54 to implement the provisions of this section.

Section 9. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. Definitions.--As used in this section, the term:

a. "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats meeting the requirements of American Society for Testing and Material (ASTM) Standard D 6751. Biodiesel may refer to a blend of biodiesel fuel meeting the ASTM standard D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend (for example, B20 is a blend of 20 percent biodiesel and 80 percent diesel).

b. "Ethanol" means a high octane, liquid fuel produced by the fermentation of plant sugars meeting the requirements of ASTM Standard D5798-99. Ethanol refers to a blend of ethanol fuel meeting ASTM Standard D5798-99 with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend (for example, E85 is a blend of 85 percent ethanol and 15 percent gasoline).

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

2. The sale or use of the following in Florida is exempt from the tax imposed by this chapter:

a. Hydrogen powered vehicles, materials incorporated into hydrogen powered vehicles, and hydrogen fueling stations with a limit of $2,000,000 in tax for all exemptions in this sub-subparagraph in each state fiscal year.

b. Commercial stationary hydrogen fuel cells with a limit of $1,000,000 in tax for all exemptions in this sub-subparagraph in each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85) including fueling infrastructure, transportation, and storage, with a limit of $1,000,000 in tax

for all exemptions in this sub-subparagraph in each state fiscal year.

3. The Department of Environmental Protection shall provide to the Department of Revenue a list of items considered to meet the exemption provided in sub-section 2.

4.a. The exemption provided by subparagraph 2. inures to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided by subparagraph 2., a purchaser shall file an application under oath with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection in consultation with the department, and shall include:

(I) The name and address of the person claiming the refund;

(II) A specific description of the purchase(s) for which a refund is sought, including, when applicable, serial number or other permanent identification number; and

(III) The sales invoice or other proof of purchase, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement, under the penalty of perjury, that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application to determine if it contains all required information and meets the criteria set out in this paragraph and shall notify the applicant of any deficiencies in the application. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for exemption under this paragraph and issue a written certification that the applicant is eligible for a refund or a written denial of such certification within 60 days. The Department of

Environmental Protection shall provide the department with a copy of each certification issued upon approval of an application. Each certified applicant shall be responsible for forwarding a certified application together with a copy of all documentation as provided in sub-subparagraph b. to the department with the time specific in sub-subparagraph d.

d. An application for a refund pursuant to this paragraph must be submitted to the department within 6 months after certification by the Department of Environmental Protection.

e. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days of formal approval by the department of the application for the refund.

f. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

g. The Department of Environmental Protection shall be responsible for ensuring that the exemptions provided under this paragraph do not exceed the limits provided in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish to the public on a regular basis the amount of sales tax funds still available in each fiscal year.

6. This exemption is repealed July 1, 2010.

Section 10. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Department of Environmental Protection for use in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 11. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in s. 220.192.

Section 12. Section 220.192, Florida Statutes, is created to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of

$3,000,000 per fiscal year, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1,500,000, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6,500,000 per fiscal year, in connection with an investment in the production and distribution of biodiesel (B10-B100) and ethanol (E10-E85) in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(2) TAX CREDIT.--For tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning on or after January 1, 2007, and ending on or before December 31, 2013, after which the credit expires and may not be used. If the credit under this section is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the

unused amount may be carried forward and utilized in tax years beginning on or after January 1, 2007, and ending on or before December 31, 2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(3) APPLICATION PROCESS.--Any corporation wishing to obtain tax credits available under this section must submit to the Department of Environmental Protection an application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Environmental Protection shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Environmental Protection's certification to the tax return on which the credit is claimed. The Department of Environmental Protection is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.--

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with

this section. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or examination or from information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall

file as provided in this paragraph within 60 days after a final order is issued following proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) The Department of Environmental Protection shall determine and publish to the public on a regular basis the amount of tax credits still available in each fiscal year.

(7) REPEAL.--The provisions of this section, except the credit carryover provisions provided in subsection (2), are repealed on July 1, 2010.

Section 13. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state

of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as

a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

Section 14. Paragraph (2) of s. 186.801, Florida Statutes, is amended to read:

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

~~(b)~~ (c) The anticipated environmental impact of each proposed electrical power plant site.

~~(c)~~ (d) Possible alternatives to the proposed plan.

~~(d)~~ (e) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

~~(e)~~ (f) The extent to which the plan is consistent with the state comprehensive plan.

~~(f)~~ (g) The plan with respect to the information of the state on energy availability and consumption.

Section 15. Paragraph (6) of section 366.04, Florida Statutes, is amended to read:

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2). The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein

shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 16. Section 366.05, Florida Statutes, is amended to read:

366.05 Powers.--

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, <u>including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of assuring the reliable provision of service</u> and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, <u>replacements</u> and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536 (1) and 120.54 to implement and enforce the provisions of this chapter.

(2) Every public utility, as defined in s. 366.02, which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all meters used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such meter tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such meters on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his or her request, but to be paid by the public utility and repaid to the consumer or user if the meter is found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such meters, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, <u>including inadequacies in fuel diversity or fuel supply reliability,</u> it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission <u>and distribution</u> facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and

authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

(9) The commission may require the filing of reports and other data by a public utility or its affiliated companies, including its parent company, regarding transactions, or allocations of common costs, among the utility and such affiliated companies. The commission may also require such reports or other data necessary to ensure that a utility's ratepayers do not subsidize nonutility activities.

(10) The Legislature finds that violations of commission orders or rules, in connection with the impairment of a public utility's operations or service, constitute irreparable harm for which there is no adequate remedy at law. The commission is authorized to seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order. Such remedies shall be in addition to and supplementary to any other remedies available for enforcement of agency action under s. 120.69 or the provisions of this chapter. The commission shall establish procedures implementing this section by rule.

(11) The commission has the authority to assess a public utility for reasonable travel costs associated with reviewing the records of the public utility and its affiliates when such records are kept out of state. The public utility may bring the records back into the state for review.

Section 17. <u>The Florida Public Service Commission shall conduct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine</u>

the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine subterranean placement of distribution lines and the hardening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Section 18. Section 403.503, Florida Statutes, is amended to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.--As used in this act:

(1) "Act" means the Florida Electrical Power Plant Siting Act.

(2) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a regional or local governmental entity.

(3) "Amendment" means a material change in the information provided by the applicant to the application for certification made after the initial application filing.

(4) "Applicant" means any electric utility that applies for certification pursuant to the provisions of this act.

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program~~.

(6) "Board" means the Governor and Cabinet sitting as the siting board.

(7) "Certification" means the written order of the board approving an application in whole or with such changes or conditions as the board may deem appropriate.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, and ~~but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the licensee ~~applicant~~, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(10) "Department" means the Department of Environmental Protection.

(11) "Designated administrative law judge" means the administrative law judge assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this act.

(12) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electric generating facility of less than 75 megawatts in capacity unless

the applicant for such a facility elects to apply for certification under this act. This term ~~and~~ includes associated facilities which directly support the construction and operation of the electrical power plant such as fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance and access roads; railway lines necessary for transport of construction equipment or fuel for the operation of the facility; and, those associated transmission lines which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect~~, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act~~. An associated transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line.

(13) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(14) "Federally delegated or approved permit program" means any environmental regulatory program approved by an agency of the Federal Government so as to authorize the department to administer and issue licenses pursuant to federal law, including, but not limited to, new source review permits, operation permits for major sources of air pollution, and prevention of significant deterioration permits under the Clean Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and 404 of the Clean Water Act

(33 U.S.C. ss. 1251 et seq.), and permits under the Resource Conservation and Recovery Act (42 U.S.C. ss. 6901 et seq.).

(15) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order or permit as defined in chapters 163 and 380, or similar form of authorization required by law, including permits issued under federally delegated or approved permit programs, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(16) "Licensee" means an applicant that has obtained a certification order for the subject project.

(17) ~~(16)~~ "Local government" means a municipality or county in the jurisdiction of which the electrical power plant is proposed to be located.

(18) ~~(17)~~ "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(19) ~~(18)~~ "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(20) ~~(19)~~ "Notice of intent" means that notice which is filed with the department on behalf of an applicant prior to submission of an application pursuant to this act and which notifies the department of an intent to file an application.

(21) ~~(20)~~ "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity,

public or private, however organized.

(22) ~~(21)~~ "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed electrical power plant.

(23) ~~(22)~~ "Public Service Commission" or "commission" means the agency created pursuant to chapter 350.

(24) ~~(23)~~ "Regional planning council" means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the electrical power plant is proposed to be located.

(25) ~~(24)~~ "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant ~~subsequent to certification~~ in documents filed with the department prior to construction.

(26) ~~(25)~~ "Site" means any proposed location wherein an electrical power plant, or an electric power plant alteration or addition resulting in an increase in generating capacity, will be located, including offshore sites within state jurisdiction.

(27) ~~(26)~~ "State comprehensive plan" means that plan set forth in chapter 187.

~~(27) "Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.~~

(28) "Ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

(29) ~~(28)~~ "Water management district" means a water management district, created pursuant to chapter 373, in the jurisdiction of which the electrical power plant is proposed to be located.

Section 19. Section 403.504, Florida Statutes, is amended to read:

403.504 Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(2) To prescribe the form and content of the public notices and the notice of intent and the form, content, and necessary supporting documentation and studies to be prepared by the applicant for electrical power plant site certification applications.

(3) To receive applications for electrical power plant site certifications and to determine the completeness ~~and sufficiency~~ thereof.

(4) To make, or contract for, studies of electrical power plant site certification applications.

(5) To administer the processing of applications for electric power plant site certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To require such fees as allowed by this act.

(7) To conduct studies and prepare a project ~~written~~ analysis under s. 403.507.

(8) To prescribe the means for monitoring the effects arising from the construction and operation of electrical power plants to assure continued compliance with terms of the

certification.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice~~.

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the Siting Board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this Act.

Section 20. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

~~(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the information required under 40 C.F.R. s. 124.6(d)), shall within 130 days after the submittal of a complete application be~~

~~publicly noticed and transmitted to the United States Environmental Protection Agency for its review pursuant to 33 U.S.C. s. 1342(d).~~

~~(3) The department shall include in its written analysis pursuant to s. 403.507(3) copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.~~

(2) ~~(4)~~ The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electric power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. ~~The~~

~~permit, if issued, shall be valid for no more than 5 years.~~

~~(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.~~

Section 21. Section 403.506, Florida Statutes, is amended to read:

403.506 Applicability, thresholds and certification.--

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum normal generator nameplate rating of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing generator shall not constitute

an alteration or addition to generating capacity which requires certification pursuant to this act.

~~(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.~~

Section 22. Section 403.5064, Florida Statutes, is amended to read:

403.5064 Application ~~Distribution of application~~; schedules.--

(1) The formal date of certification application filing and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format, electronic or otherwise as prescribed by rule, to the department and other agencies identified in s. 403.507(2)(a).

(b) The application fee specified under s. 4093.518 to the department.

(2) ~~(1)~~ Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of ~~those affected or other~~ any additional agencies or persons entitled to notice and copies of the application and any amendments.

(3) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered good cause for alteration of time limits pursuant to s. 403.5095.

(4) ~~(2)~~ Within 15 ~~7~~ days after the application filing, ~~completeness has been determined,~~ the department shall prepare a

proposed schedule of dates for determination of completeness, submission of statements of issues, ~~determination of sufficiency, and~~ submittal of final reports, ~~from affected and other agencies~~ and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3) ~~(4)~~. This schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection(2) ~~(1)~~, and all parties. Within 7 days after the filing of this proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) ~~(3) Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1).~~ Copies of changes and amendments to the application shall be timely distributed by the applicant to all ~~affected~~ agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

Section 23. Section 403.5065, Florida Statutes, is amended to read:

403.5065 Appointment of administrative law judge, powers and duties.--

(1)(a) Within 7 days after receipt of an application, ~~whether complete or not,~~ the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act.

(b) The division director shall designate an administrative

law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an administrative law judge who has had prior experience or training in electrical power plant site certification proceedings.

(c) Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) The administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.

Section 24. Section 403.5066, Florida Statutes, is amended to read:

403.5066 Determination of completeness.—

(1)(a) Within 30 days after filing of an application, the affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 ~~15~~ days after the filing ~~receipt~~ of an application, the department shall file a statement with the Division of Administrative Hearings, ~~and~~ with the applicant, and with all parties declaring its position with regard to the completeness~~, not the sufficiency,~~ of the application. The department's statement shall be based upon consultation with the affected agencies.

(2) ~~(1)~~ If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, ~~and with~~ the department and all parties, ~~a statement:~~

(a) A withdrawal of ~~Agreeing with the statement of the department and withdrawing~~ the application;

(b) Additional information necessary to make the application complete. If the department first determined that the application is incomplete, the time schedules under this act shall not be tolled if the applicant makes the application complete within this 15 day time period. A subsequent finding by the department that the application remains incomplete tolls the time schedules under this act until the application is determined complete; ~~Agreeing with the statement of the department and agreeing to amend the application complete without withdrawing it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete; or~~

(c) A statement contesting ~~Contesting~~ the department's determination of incompleteness; or ~~statement of the department.~~

(d) A statement agreeing with the department and requesting additional time to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) ~~(2)~~ If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than ~~30~~ 21 days after the filing of the statement by the department. The administrative law judge shall render a decision within ~~10~~ 7 days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute. Any substantially

affected person who wishes to become a party to the completeness hearing must file a motion to intervene no later than 10 days prior to the date of the hearing.

(c) ~~(a)~~ If the administrative law judge determines that the application was not complete ~~as filed~~, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) ~~(b)~~ If the administrative law judge determines that the application was complete at the time it was declared incomplete ~~filed~~, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraphs (2)(b), (2)(d) or (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

Section 25. Section 403.50663, Florida Statutes, is created to read:

403.50663 Informational public meetings.-

(1) Each local government or regional planning council the jurisdiction of which the power plant is proposed to be sited in may hold one informational public meeting in addition to the

hearings specifically authorized by this act on any matter associated with the electric power plant proceeding. Such informational public meetings shall be held no later than 70 days after the application is filed. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electric power plant or associated facilities, obtain comments from the public and formulate its recommendation with respect to the proposed electric power plant.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting are not for the alteration of any time limitation in this act under s. 403.5095. or grounds to deny or condition certification.

Section 26. Section 403.50665, Florida Statutes, is created to read:

403.50665 Land use consistency determination.--

(1) Within 80 days after the application is filed, each local government shall file a determination with the department and the applicant on the consistency of the site or any directly associated facilities within their jurisdiction with existing land use plans and zoning ordinances which were in effect on the

date the application was filed. The applicant shall publish notice of the determination in accordance with the requirements of s. 403.5115. These dates may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(2) If any substantially affected person wishes to dispute the local government's determination, they shall file a petition with the department within 15 days of the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(3) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 27. Section 403.5067, Florida Statutes, is repealed.

Section 28. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, ~~and~~ the applicant, and all parties no later than 40 ~~60~~ days after the certification application has been determined ~~distribution of the~~ complete ~~application~~. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2) ~~(a)~~ The following agencies shall prepare reports as provided below.

(a)1. ~~and shall submit them to the department and the applicant~~ No later than 100 ~~within 150~~ days after ~~distribution of~~ the certification application has been determined complete ~~application~~, the following reports shall be submitted to the department and the applicant:

a. ~~1.~~ The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

~~2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.~~

b. ~~3.~~ The water management district shall prepare a report as to matters within its jurisdiction, including but not limited to impact on water resources, impact on regional water supply planning, and impact on District-owned lands and works.

c. ~~4.~~ Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical

power plant, including ~~adopted local comprehensive plans, land development regulations, and~~ any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

d. ~~5.~~ The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

e. Each ~~The~~ regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electric power plant, based on the degree to which the electric power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

f. The Department of Transportation shall address the impact of the proposed transmission line or corridor on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction.

g. ~~7.~~ Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

~~(b) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following, which shall be completed no later than 210 days after the complete application has been filed with the department:~~

~~1. Cooling system requirements.~~

~~2. Construction and operational safeguards.~~

~~3. Proximity to transportation systems.~~

~~4. Soil and foundation conditions.~~

~~5. Impact on suitable present and projected water supplies~~

~~for this and other competing uses.~~

~~6. Impact on surrounding land uses.~~

~~7. Accessibility to transmission corridors.~~

~~8. Environmental impacts.~~

~~9. Requirements applicable under any federally delegated or approved permit program.~~

2. ~~(c)~~ Each report described in subparagraph ~~paragraphs~~ (a) ~~and (b)~~ shall contain:

a. A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception ~~all information on variances, exemptions, exceptions~~, or other relief is necessary in order for the proposed electric power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program; ~~which may be required by s. 403.511(2) and~~

b. A recommendation for approval or denial of the application; and,

c. Any ~~any~~ proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

3. ~~(d)~~ The agencies shall initiate the activities required by this section no later than 15 ~~30~~ days after the ~~complete~~ application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

(b)1. No later than 150 days after the application is

filed, the Public Service Commission shall prepare a report as to the present and future need for the electric generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

2. Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to further processing of the application.

~~(3) No later than 60 days after the application for a federally required new source review or prevention of significant deterioration permit for the electrical power plant is complete and sufficient, the department shall issue its preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4) The department shall prepare a project ~~written~~ analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined complete ~~filed with the department, but no later than 60 days prior to the hearing~~, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be

consistent and in compliance with matters within the department's standard jurisdiction, including the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the rules of the affected agencies.

(b) Copies of the studies and reports required by this section ~~and s. 403.519~~.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, ~~The~~ the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

~~(f) Copies of the department's draft of the operation permit for a major source of air pollution, which must also be provided to the United States Environmental Protection Agency for review within 5 days after issuance of the written analysis.~~

(5) ~~(4)~~ Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are ~~shall be~~ grounds to deny or condition certification.

Section 29. Section 403.508, Florida Statutes, is amended to read:

403.508 Land use and certification hearings ~~proceedings~~,

parties, participants.--

(1)(a) If a petition for a hearing on land use has been filed pursuant to s. 403.50665, the ~~The~~ designated administrative law judge shall conduct a land use hearing in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than ~~within~~ 30 ~~90~~ days after the department's receipt of the petition ~~a complete application for electrical power plant site certification by the department~~. The place of such hearing shall be as close as possible to the proposed site or directly associated facility.

~~(2)~~ The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 ~~45~~ days after receipt of the recommended order by the board.

(d)1. If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of ~~affect~~ the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

2. If it is determined by the board that the proposed site does not conform, ~~it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this~~

~~decision to~~ the board~~, which~~ may, if it determines after notice and hearing that it is in the public interest to authorize the use of the land as a site for an electrical power plant, authorize a variance to the adopted land use plan and zoning ordinances. In the event a variance is denied, it shall be the responsibility of the applicant to make the necessary application for rezoning. ~~no~~ No further action may be taken on the complete application ~~by the department~~ until the proposed site conforms to the adopted land use plan or zoning ordinances or the board grants a variance.

(2)(a) ~~(3)~~ A certification hearing shall be held by the designated administrative law judge no later than 250 ~~300~~ days after the complete application is filed with the department~~;~~ ~~however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing~~. The certification hearing shall be held at a location in proximity to the proposed site. ~~The certification hearing shall also constitute the sole hearing allowed by chapter 120 to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any federally delegated or approved permit program. At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 60 days after the filing of the hearing transcript. In the event the administrative law judge fails to issue a recommended order within 60 days after the filing of the hearing transcript, the administrative law judge shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended~~

~~order will be issued.~~

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3) ~~(4)~~ (a) Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The regional planning council.
8. The local government.
9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon ~~Upon~~ the filing with the administrative law judge of a notice of intent to be a party no later than 30 ~~at least~~ ~~15~~ days prior to the date of the certification hearing ~~land use~~ hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.
2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial

groups; or to promote comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(4), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant,

2. The department,

3. State agencies,

4. Regional agencies, including regional planning councils and water management districts,

5. Local governments,

6. Other parties.

(b) When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No later than 25 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

~~(5) When appropriate, any person may be given an opportunity to present oral or written communications to the administrative law judge. If the administrative law judge~~

~~proposes to consider such communications, all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.~~

~~(6) The designated administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and this chapter and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.~~

~~(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:~~

~~(a) The applicant.~~

~~(b) The department.~~

~~(c) State agencies.~~

~~(d) Regional agencies, including regional planning councils and water management districts.~~

~~(e) Local governments.~~

~~(f) Other parties~~

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

(8) In issuing permits under the federally approved or delegated new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in coordination with the certification of a power plant under this act are federally enforceable and are issued

after opportunity for informed public participation regarding the terms and conditions thereof. ~~The department shall accept written comment with respect to an application for, or the department's preliminary determination on, a new source review or prevention of significant deterioration permit for a period of no less than 30 days from the date notice of such action is published. Upon request submitted within 30 days after published notice, the department shall hold a public meeting, in the area affected, for the purpose of receiving public comment on issues related to the new source review or prevention of significant deterioration permit. If requested following notice of the department's preliminary determination, the public meeting to receive public comment shall be held prior to the scheduled certification hearing. The department shall also solicit comments from the United States Environmental Protection Agency and other affected federal agencies regarding the department's preliminary determination for any federally required new source review or prevention of significant deterioration permit.~~ When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. It is the intent of the Legislature that the issuance of such permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures ~~contained in the state implementation plan,~~ the applicable federal requirements ~~of the implementation plan~~ shall control.

Section 30. Section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(1)(a) If the administrative law judge has granted a

request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act, and state the reasons for issuance or denial.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within ~~Within~~ 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving ~~certification~~ or denying certification ~~the issuance of a certificate~~, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification ~~the certificate~~ is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of electric power plant and directly associated facilities and their construction and operation will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection;

(b) Comply with applicable nonprocedural requirements of

agencies;

(c) Be consistent with applicable local government comprehensive plans and land development regulations;

(d) Meet the electrical energy needs of the state in an orderly and timely fashion;

(e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519, and the impacts upon air and water quality, fish and wildlife, and the water resources and other natural resources of the state resulting from construction and operation of the facility.

~~(3) Within 30 days after issuance of the certification, the department shall issue and forward to the United States Environmental Protection Agency a proposed operation permit for a major source of air pollution and must issue or deny any other license required pursuant to any federally delegated or approved permit program. The department's action on the license and its action on the proposed operation permit for a major source of air pollution shall be based upon the record and recommended order of the certification hearing. The department's actions on a federally required new source review or prevention of significant deterioration permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for a new source review or prevention of significant deterioration permit, on timely public comments received with respect to the application or preliminary determination for such permit, and on the provisions of the state implementation plan. The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall~~

~~be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan. Any final operation permit for a major source of air pollution must be issued in accordance with the provisions of s. 403.0872. Unless the federally delegated or approved permit program provides otherwise, licenses issued by the department under this subsection shall be effective for the term of the certification issued by the board. If renewal of any license issued by the department pursuant to a federally delegated or approved permit program is required, such renewal shall not affect the certification issued by the board, except as necessary to resolve inconsistencies pursuant to s. 403.516(1)(a).~~

(4) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and ~~site~~ its directly associated facilities and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

~~(5) Except for the issuance of any operation permit for a major source of air pollution pursuant to s. 403.0872, the issuance or denial of the certification by the board and the issuance or denial of any related department license required pursuant to any federally delegated or approved permit program shall be the final administrative action required as to that application.~~

~~(6) All certified electrical power plants must apply for and obtain a major source air-operation permit pursuant to s. 403.0872. Major source air-operation permit applications for certified electrical power plants must be submitted pursuant to a schedule developed by the department. To the extent that any conflicting provision, limitation, or restriction under any rule, regulation, or ordinance imposed by any political subdivision of the state, or by any local pollution control program, was superseded during the certification process pursuant to s. 403.510(1), such rule, regulation, or ordinance shall continue to be superseded for purposes of the major source air-operation permit program under s. 403.0872.~~

Section 31. Section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.--

(1) Subject to the conditions set forth therein, any certification ~~signed by the Governor~~ shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the

department or any agency which were expressly considered during the proceeding unless waived by the agency as provided below and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order ~~by the siting board~~ that the public interests set forth in s. 403.509(3) ~~403.502~~ in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

~~Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any electrical power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program~~

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for

permits issued pursuant to any federally delegated or approved permit program ~~s. 403.0885~~, and except as provided in ~~s. 403.509(3) and (6),~~ chapter 404, or the Florida Transportation Code~~, or 33 U.S.C. s. 1341~~.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final

operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to such facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32. Section 403.5112, Florida Statutes, is created to read:

403.5112 Filing of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated linear facility pursuant this act the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 33. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application, and revisions or amendments thereto, as certified, the licensee shall submit to the department a written request for amendment and description of

the proposed change to the application. The department shall, within 30 days of the receipt of the request for the amendment, determine whether the proposed change to the application requires a modification of the conditions of certification.

(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall notify, in writing, the licensee, all agencies, and all parties of the approval of the proposed amendment.

(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall notify the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

Section 34. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public Notice~~; costs of proceeding~~.--

(1) The following notices are to be published by the applicant:

(a) Notice of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) A notice of filing of the application, which shall include a description of the proceedings required by this act, no later than 21 days after the application filing ~~be published as specified in subsection (2), within 15 days after the application has been determined complete~~. Such notice shall give notice of the provisions of s. 403.511(1) and (2) ~~and that the application constitutes a request for a federally required new source review or prevention of significant deterioration permit~~.

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

(d) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 ~~45~~ days before the hearing.

(e) ~~(d)~~ Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification ~~no later than 45 days before the~~ hearing.

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 7 days prior to the date of the originally scheduled certification hearing.

(g) ~~(e)~~ Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification.~~, except that the~~ The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing ~~provided as specified in paragraph (d)~~.

(g) ~~(f)~~ Notice of a supplemental application, which shall be published as specified in paragraph (1)(b) and subsection (2). ~~as follows:~~

~~1. Notice of receipt of the supplemental application shall be published as specified in paragraph (b).~~

~~2. Notice of the certification hearing shall be published~~

~~as specified in paragraph (d)~~.

(h) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (1)(b) and subsection (2).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section.~~ These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120, and Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) ~~Publish in the Florida Administrative Weekly notices~~ Notice of the filing of the notice of intent within 15 days after receipt of the notice;

(b) Notice of the filing of the application, no later than 21 days after the application filing;

(c) Notice of the land use hearing before the

administrative law Judge, if applicable, no later than 15 days before the hearing;

(d) Notice of the land use hearing before the board, if applicable;

(e) Notice of the certification hearing at least 65 days before the date set for the certification hearing;

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 7 days prior to the date of the originally scheduled certification hearing;

(g) Notice of the hearing before the board, if applicable; and

(h) Notice of stipulations, proposed agency action, or petitions for modification.~~; and~~

~~(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose.~~

~~(5) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.~~

Section 35. Section 403.513, Florida Statutes, is repealed.

403.513 Review.--Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate ~~Separate~~ appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may ~~shall~~ be consolidated for purposes of judicial review.

Section 36. Section 403.516, Florida Statutes, is amended to read:

403.516 Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority

to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a site certification which are inconsistent with the terms of any federally delegated or approved ~~final air pollution operation~~ permit for the certified electrical power plant ~~issued by the United States Environmental Protection Agency under the terms of 42 U.S.C. s. 7661d~~.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification;

b. The factual reasons asserted for the modification; and,

c. The anticipated environmental effects of the proposed modification.

2. ~~b.~~ The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

3. If objections are raised or the department denies the request, the applicant or department may file a request ~~petition~~ for a hearing on the modification ~~pursuant to paragraph (c).~~

~~(c) A petition for modification may be filed by the applicant or~~ with the department. Such a request shall be handled pursuant to chapter 120. ~~setting forth:~~

~~1. The proposed modification,~~

~~2. The factual reasons asserted for the modification, and~~

~~3. The anticipated effects of the proposed modification on the applicant, the public, and the environment. The petition for modification shall be filed with the department and the Division of Administrative Hearings.~~

3. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

~~(2) Petitions filed pursuant to paragraph (1)(c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

(2) ~~(3)~~ Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 37. Section 403.517, Florida Statutes, is amended to read:

403.517 Supplemental applications for sites certified for ultimate site capacity.--

(1) ~~(a)~~ Supplemental ~~The department shall adopt rules governing the processing of supplemental~~ applications may be submitted for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified

for that site. Such applications shall include all new directly associated facilities that support the construction and operation of the electric power plant.

(a) The review shall use the same procedural steps and notices as for an initial application. ~~The rules adopted pursuant to this section shall include provisions for:~~

~~1. Prompt appointment of a designated administrative law judge.~~

~~2. The contents of the supplemental application.~~

~~3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.~~

~~4. Public notice of the filing of the supplemental applications.~~

~~5. Time limits for prompt processing of supplemental applications.~~

~~6. Final disposition by the board within 215 days of the filing of a complete supplemental application.~~

(b) The time limits for processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 ~~by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by~~

~~any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications~~.

(2) ~~Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

~~(3)~~ The land use and zoning consistency determination of s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

~~(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.~~

Section 38. Section 403.5175, Florida Statutes, is amended to read:

403.5175 Existing electrical power plant site certification.--

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(12) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to assure compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for site certification under this section must be in the form prescribed by department rule.

Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility, ~~in accordance with ss. 403. 403.5064-403.5115~~. except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations;

(b) A description of all proposed changes or alterations to the site or electrical power plant, including all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and directly associated facilities and by the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and directly associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination ~~hearing~~ requirements of s. 403.50665 does ~~of s. 403.508(1) and (2) do~~ not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site. If the applicant proposes to expand the boundaries of the existing site

to accommodate portions of the plant or associated facilities, a land use and zoning determination shall be made ~~hearing must be held~~ as specified in s. 403.50665 ~~403.508(1) and (2)~~; provided, however, that the sole issue for determination ~~through the land use hearing~~ is whether the proposed site expansion is consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3); and ~~applicable nonprocedural requirements of agencies~~;

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken;

~~(c) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and~~

~~(d) Serve and protect the broad interests of the public.~~

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

Section 39. Section 403.501, Florida Statutes, is amended to read:

403.518 Fees; disposition.--

(1) The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(a) A fee for a notice of intent pursuant to s. 403.5063, in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(b) An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electric generating capacity proposed by the application~~, or the number and size of local governments in whose jurisdiction the electrical power plant is located~~.

1. Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review, ~~reviewing~~ and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

2. The following percentages ~~Twenty percent of the fees or $25,000, whichever is greater,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services:~~.~~

a. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

b. An additional five percent if a land use hearing is held pursuant to s. 403.508 is held.

c. An additional ten percent if a certification hearing pursuant to s. 403.508 is held.

3.a. Upon written request with proper itemized accounting within 90 days after final agency action by the board or

withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, ~~the department shall reimburse the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and any water management district created pursuant to chapter 373, regional planning council, and local government in the jurisdiction of which the proposed electrical power plant is to be located, and any other agency from which the department requests special studies pursuant to s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~ the preparation of any studies required of the agencies by this act, ~~and for~~ agency travel and per diem to attend any hearing held pursuant to this act, and for local government's or regional planning council's provision of additional notice of the informational public meetings ~~governments to participate in the proceedings~~. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in ~~In~~ the event the amount of funds available for reimbursement ~~allocation~~ is insufficient to provide for full compensation ~~complete reimbursement~~ to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

b. If the application review is held in abeyance for more than one year, the agencies may submit a request for reimbursement pursuant to a. above.

4. If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the certification application is withdrawn the remaining sums shall be refunded to

the applicant within 90 days after withdrawal.

(c)1. A certification modification fee, which shall not exceed $30,000. The fee shall be determined as established by rule by the department dependent upon the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

2. The fee shall be submitted to the department with a ~~formal~~ petition for modification ~~to the department~~ pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in paragraph (b), except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. ~~The fee for a modification by agreement filed pursuant to s. 403.516(1)(b) shall be $10,000 to be paid upon the filing of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days of issuance or denial of the modification or withdrawal of the request for modification.~~

(d) A supplemental application fee, not to exceed $75,000 to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in paragraph (b)~~,~~ ~~except that only $20,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services~~.

(e) An existing site certification application fee, not to

exceed $200,000 to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in paragraph (b).

~~(2) Effective upon the date commercial operation begins, the operator of an electrical power plant certified under this part is required to pay to the department an annual operation license fee as specified in s. 403.0872(11) to be deposited in the Air Pollution Control Trust Fund.~~

Section 40. Section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.--

(1)(a) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(b) The ~~commission~~ applicant shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 ~~45~~ days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(2) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, ~~and~~ whether the proposed plant is the most cost-effective

alternative available, fuel diversity in the state, and fuel supply reliability. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.407(2)(b) ~~403.507(2)(a)2~~. An order entered pursuant to this section constitutes final agency action.